

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

BETTER EDUCATION, INC.,  
Plaintiffs,

v.

EINSTRUCTION CORPORATION ET AL,  
Defendant.

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CIVIL ACTION NO. 2-08-cv-446-TJW-CE

**ORDER**

The above-titled and numbered civil action was referred to United States Magistrate Judge Everingham for pre-trial purposes pursuant to 28 U.S.C. § 636. The report of the Magistrate Judge [Dkt. No. 95], which contains his proposed findings of fact and his recommendation that the court deny Qwizdom Inc.'s motion to dismiss, has been presented for consideration. The motion to dismiss contends that service of process was insufficient, joinder is improper, and the complaint fails to state a claim for which relief can be granted. Magistrate Judge Everingham found that joinder was proper because the claims against the multiple defendants involved common questions of law and fact in light of the fact that a common patent is asserted against similar accused products. The Magistrate Judge also found that paragraphs 5, 7, and 12 provided sufficient notice to Qwizdom of the nature of Plaintiff's claims against it. Finally, Magistrate Judge Everingham agreed that service upon Qwizdom was insufficient but recommended that the Court in its discretion quash Plaintiff's insufficient service and order Plaintiff to execute service within thirty days.

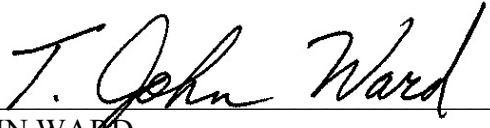
Qwizdom has filed objections to Judge Everingham's report and recommendation. Qwizdom argues that it would be an abuse of discretion to give Plaintiff an additional thirty days to

execute service because Plaintiff did not show good cause why it failed to execute service properly. The court may enlarge the 120-day period for service of process “even if there is no good cause shown.” *Henderson v. U.S.*, 517 U.S. 654, 663–4 (1996) (citing Advisory Committee’s Notes on Fed. R. Civ. Proc. 4). It is upon a showing of good cause that a court is *required* to extend the service period. *See* Fed. R. Civ. P. 4(m) (“But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.”). It is not an abuse of discretion to enlarge the period in which Plaintiff may serve Qwizdom.

For the foregoing reasons, the undersigned overrules Plaintiff’s objections and adopts the findings and conclusions contained in Judge Everingham’s report and recommendation.

It is SO ORDERED.

SIGNED this 9th day of March, 2010.

  
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T. JOHN WARD  
UNITED STATES DISTRICT JUDGE